IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,
Plaintiff in Error,

v.

CHARLES HABER, ET AL.,
Defendants in Error.

No. 664.

Motion to Advance.

Come now the defendants in error in the cause above entitled, and move the Court to advance the case on the docket for hearing on a day convenient to the Court during the present term.

The case comes here on writ of error to the Supreme Court of Kansas.

It arose upon these facts: In the spring of 1892, the plaintiff in error transported 2200 cattle from Pecos County, Texas, (north and west of the quarantine line established by the Department of Agriculture) to Hartford, Kansas. By the transportation contract the Railway Company agreed to and did deliver the cattle to Hosier Bros. the consignees, at a pasture 14 miles from its station at Hartford.

In the summer of 1892 the Railway Company was sued in a state court by Charles Haber. He alleged that said cattle were

brought into Kansas in violation of the provisions of certain statutes of that state prohibiting the importation into Kansas of cattle capable of communicating Texas fever, and that the cattle so transported by the Railway Company were infected with and communicated said disease to his cattle.

In this action 151 other cattle owners intervened under similar allegations. The case was tried in the *nisi prius* court, and judgments were there rendered against the Railway Company in favor of the plaintiff and of each intervenor. In June, 1896, these judgments were affirmed by the supreme court of Kansas.

The Railway Company in its petition for a writ of error to this court makes two questions, viz:

> FIRST. That it claimed and was denied the right to transport cattle as a common carrier of interstate commerce from north and west of the quarantine line established by the Department of Agriculture on February 22, 1892, and under the interstate commerce act, and the amendments thereto.
>
> SECOND. That Chap. 161, Laws of 1881, Chap. 191, Laws of 1885, and Chap. 201, Laws of 1891, passed by the legislature of Kansas, and which prohibit the shipment of cattle into that state from points south of the south line thereof between February 1 and December 1 of each year, are in conflict with the act to establish a Bureau of Animal Industry, &c. (23 Stat. 31), and the rules and regulations promulgated thereunder; also in conflict with the act to regulate commerce (24 Stat. 379 and its amendments); and also in conflict with the third subdivision of Section 8 of Art. 1, and the second subdivision of Art. 6 of the Federal Constitution.

These contentions challenge the validity and constitutionality of every statute of Kansas, the purpose of which is to prevent carriers and others from bringing into the state cattle affected with Texas or splenic fever.

No question of equal importance to the cattle industry of the United States could be brought here. All cattle native to

or acclimated in that part of the country lying north of the quarantine line established by the Agricultural Department and by various western states, if brought in contact with cattle native to or acclimated in that part of the country south of said line, contract the malady, and most of them die. The same catastrophe occurs—as it did in this case—if northern cattle even pass over the trail of southern cattle. Hence it is that practically every cattle owner and dealer in the west is directly interested in knowing as soon as possible whether the laws passed by many of the western states, like those in question here, are or are not in conflict with the similar federal statute, and with the clauses of the Federal Constitution above referred to.

The drastic character of these State enactments, and the universal dread of "Texas fever" felt by every farmer whose cattle are in danger of being infected with it, demonstate the keen interest of the people in, and the overwhelming and immediate importance of, the controversy involved.

It is late to ask the Court to assign the case for hearing at this term; and we venture to do so only because in an early decision lies the only chance of light to the federal and state authorities in their efforts to save the cattle in the northern states from practical extirpation by this deadly disease. If the police power of the state is helpless to protect the cattle of its citizens from destruction by this pest, Congress should be at once advised of the fact. In this case one shipment of southern cattle destroyed the property of ONE HUNDRED AND FIFTY-TWO men of the aggregate value of nearly FIFTY THOUSAND dollars. It is hardly possible to conceive of a more momentous question, either in its financial or legal phase.

Letters from the Secretary of the Department of Agriculture, and from the Governor of Kansas, printed as an *addendum* hereto, show that those distinguished executive officials feel so deeply concerned in the matter that they have ventured to strenuously urge the court to grant the application. Attention

is respectfully called to these letters, as showing that there is a deeper and larger question in the case than the monetary one; and it is suggested that the appeal to the court contained in said letters, of itself, furnishes cogent and sufficient warrant for the motion, and imperative and commanding reasons for granting it.

Notice of this motion has been accepted by the attorney for plaintiff in error, and filed with the clerk.

W. C. PERRY,
FORT SCOTT, KAN.

EUGENE HAGAN,
TOPEKA, KAN.
Attorneys for defendants in error.

UNITED STATES DEPARTMENT OF AGRICULTURE,
Office of the Secretary,

WASHINGTON, D. C., *Feb. 3, 1897.*

Mr. C. J. LANTRY,
Riggs House,
Washington, D. C.

MY DEAR SIR:

Because you are a party in interest to the suit pending in the United States Supreme Court, in the case entitled The Missouri, Kansas & Texas Railway Company, *vs.* Chas. Haber *et. al.*, defendants in error, I make bold to write you in the interests of the cattle industry of this country, which will be much benefited if this case can be accelerated and determined one way or another at an early date.

[Here follows a statement of the facts which is omitted].

This Department fully realizes that the questions raised by the Railway Company challenge the constitutionality of all the laws passed in Kansas, the purpose of which is to prevent carriers and others bringing into the state cattle affected with Texas fever.

In view of all the questions involved, it is a matter of great importance to the Department of Agriculture and to the cattle interests of the country that this case be advanced on the calendar of the Supreme Court of the United States and determined one way or another at the earliest possible moment. It is to be hoped that the attorneys for the Railway Company will, in view of this public exigency, do all in their power to bring about the early determination of the case in issue.

Very respectfully yours,

J. STERLING MORTON,
Secretary.

TOPEKA, KANS., *January 25, 1897.*

Messrs. FARRINGTON & LANTRY,
Topeka, Kansas.

DEAR SIRS:

My attention has been called to the fact that an appeal has been taken in the case of M. K. & T. Ry. *vs.* Haber *et al.*, from the Supreme Court of this State to the Supreme Court of the United States, on the ground that it involves a federal question necessary for its determination, and as there is involved in said case the constitutionality of the Laws of the State of Kansas in relation to the importation of live stock of other States, and the rules and regulations of the sanitary live stock commission of the State, I deem it of the utmost importance that said case be advanced and taken up at an early date, as the live stock interests of the State of Kansas are of so much importance to our people as to really demand this, and the public interests are such as to really make it necessary that the case be taken up at once, and have these important questions settled.

Hoping that you will use every means to have this case taken up, so that our stock interests may be amply protected and cared for, I remain,

Sincerely yours,

J. W. LEEDY,
Gov. of the State of Kansas.